



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KC FILED

JUN 21 2005

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

BILLIE RAY LEWIS, as Brother, Next Friend,
and Special Administrator of CHRISTOPHER
HICKS, deceased,

Plaintiff,

v.

No. 04 C 3904

CITY OF CHICAGO, and CHICAGO POLICE
OFFICERS L. SOTO, Star 8403, A. PENA, Star
18513, ROBERT ARNOLTS, Star 19998, and
BRIAN DEVAN, Star 3871,

Defendants.

Judge Conlon

**PLAINTIFF'S MOTION TO AMEND PRETRIAL ORDER
TO INCLUDE VIDEO EVIDENCE DEPOSITION OF DR. JESSE HALL**

Plaintiff Billie Ray Lewis, through his attorneys, Smith, Coffey & Alexander, Ltd., respectfully moves this Honorable Court, pursuant to Fed.R.Civ.Proc. 16 and Local Rule 16.1, to amend the Pretrial Order in this cause to include Plaintiff's intended presentation of Dr. Hall's testimony via a videotaped evidence deposition.

In support of this Motion, Plaintiff shows to the Court the following:

1. Plaintiff would much prefer to present Dr. Hall's testimony live before the jury. Dr. Hall was available for the original trial date, but he will be out of town at a medical conference, and then a vacation, during the new trial date for this cause. (See Affidavit of Daniel S. Alexander, attached as Exhibit A.)

2. When this Court set the new trial date in its May 26, 2005 Order, plaintiff's counsel

immediately informed Dr. Hall's secretary of the new date. However, it was not until the second week of June that Dr. Hall's office informed plaintiff's counsel of the scheduling conflict.

(Exhibit A.) The same day plaintiff's counsel became aware of this problem, calls were placed to defense counsel to try to get agreement on a date for the video evidence deposition of Dr. Hall. (Exhibit A.) Counsel for defendant officers never returned multiple calls seeking dates for the deposition. (See June 16, 2005 letter attached as Exhibit B.) Plaintiff's counsel did discuss the need for an evidence deposition with counsel for the City, who never expressed any objection to the taking of this deposition. (Exhibit A.)

3. Because plaintiff's counsel never got firm agreement on dates for this deposition, a letter was sent to defense counsel on June 16, 2005 setting the deposition for June 25, 2005. (Exhibit B.) The same day, plaintiff faxed defendants a Notice of Video Evidence Deposition, attached as Exhibit C.


4. Because the scheduling conflict was not apparent until after the Final Pretrial Order was entered, it would not have been possible to list the video evidence of Dr. Hall in the original order.

5. Plaintiff now asks this Court, in the interests of justice, to permit the amendment of the Final Pretrial Order to include presenting Dr. Hall's testimony via videotaped evidence deposition.

WHEREFORE, plaintiff respectfully moves this Honorable Court to amend the Pretrial Order in this cause to include Plaintiff's intended presentation of Dr. Hall's testimony via a videotaped evidence deposition.

Respectfully submitted,

BILLIE RAY LEWIS



By One of his Attorneys

Daniel S. Alexander
Christopher Smith
SMITH, COFFEY & ALEXANDER.
119 North Peoria Street, Suite 3A
Chicago, Illinois 60607
312-850-2600

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AFFIDAVIT OF DANIEL S. ALEXANDER

DANIEL S. ALEXANDER, being first duly sworn on oath, deposes and states as follows:

1. At the time he was retained, plaintiff's disclosed medical expert Dr. Jesse Hall informed our law firm that he was available for the original trial date.
2. When this Court set the new trial date in its May 26, 2005 Order, plaintiff's counsel immediately informed Dr. Hall's secretary of the new date. However, it was not until the second week of June that Dr. Hall's office informed plaintiff's counsel of a scheduling conflict. We were told that from the beginning of the trial through July 11, 2005, Dr. Hall would be attending a medical conference in California that he could not get out of. In addition, we were informed that, immediately following the conference, Dr. Hall and his family were flying direct to British Columbia for a family wilderness vacation, and that he could not return to Chicago until July 28,

Ex. A

2005. We tried to get Dr. Hall to agree to fly back for his testimony, but he stated that this would not be possible as he would be in the Canadian wilderness far from any airports.

3. The same day plaintiff's counsel became aware of this problem, calls were placed to defense counsel to try to get agreement on a date for the video evidence deposition of Dr. Hall. Counsel for defendant officers never returned multiple calls seeking dates for the deposition. Plaintiff's counsel did discuss the need for an evidence deposition with counsel for the City, who never expressed any objection to the taking of this deposition.

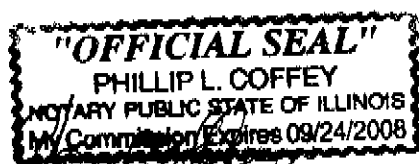
4. Because plaintiff's counsel never got firm agreement on dates for this deposition, a letter was sent to defense counsel on June 16, 2005 setting the deposition for June 25, 2005. The same day, plaintiff faxed defendants a Notice of Video Evidence Deposition.

Further affiant sayeth not.



Daniel S. Alexander

Subscribed and sworn to before me
this 21st day of June, 2005



Notary Public

SMITH, COFFEY & ALEXANDER

CHRISTOPHER R. SMITH

PHILLIP L. COFFEY

DANIEL S. ALEXANDER

LAWYERS

119 NORTH PEORIA STREET, SUITE 3A
CHICAGO, ILLINOIS 60607

PHONE (312) 850-2600
FAX (312) 850-2704

June 16, 2005

BY FAX TO 744-6566 and 744-¹⁰⁵⁴~~6042~~

Robert Barber
Chris Murray
Asst. Corp. Counsels
30 North LaSalle, Suites 1400, 700
Chicago, Illinois 60602

Re: Lewis v. Chicago, 04 C 3904

Dear Counsel:

Attached is plaintiff's Exhibit 34, which is a Social Security transcript of Chris Hick's earnings from 1984 to the present which we just received today pursuant to our joint attempts to get social security records. Naturally, we will be offering this exhibit at trial.

In addition, Mr. Barber has not responded to our several voice mails regarding dates for doing Dr. Hall's evidence video dep. Because time is short, we must pick a date and notice up the dep for Saturday, June 25, at 10:00 p.m. at Dr. Hall's office. We regret the Saturday dep, but all other choices are like the June 27 date we offered, beginning at 4:30 p.m., and likely not concluding until after 10:00 p.m. We believe it would be better to complete the dep during the daytime.

Finally, Dr. Hall advises us that he still has not received payment for his deposition fee. Please advise us this week as to payment status, or we will have no choice but to file a motion to compel.

Very truly yours,



Daniel S. Alexander

Ex. B

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NOTICE OF VIDEO EVIDENCE DEPOSITION

To: Robert Barber
Asst. Corp. Counsel
30 N. LaSalle Street, Suite 1400
Chicago, IL 60602
Fax 744-6566

Chris Murray
Asst. Corp. Counsel
30 N. LaSalle Street, Suite 700
Chicago, IL 60602
Fax 744-1054

PLEASE TAKE NOTICE that we will take the video evidence deposition of Dr. Jesse B. Hall, M.D., on **Saturday, June 26, 2005, at 10:00 a.m.**, at 5841 S. Maryland Avenue, Suite MC 6026, Chicago, Illinois, before a notary public or other officer authorized to administer oaths. The deposition shall be recorded by stenographic and videotape means.

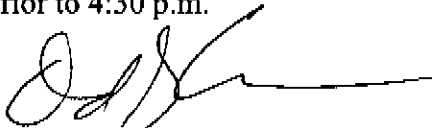


One of Plaintiff's attorneys

Daniel S. Alexander
Smith, Coffey & Alexander
119 North Peoria, Suite 3A
Chicago, Illinois 60607
312-850-2600

Certificate of Service

The undersigned attorney hereby certifies that he served the foregoing pleading to the foregoing attorneys by fax on June 16, 2005, prior to 4:30 p.m.



Daniel S. Alexander

Ex. C